



Legislative Research Council

Rules Review Committee Minutes

**Three hundred fifty-third meeting
Monday
November 9, 2015**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred fifty-third meeting of the Rules Review Committee was called to order by Senator Mike Vehle (Chair) at 10:00 a.m., CT, on November 9, 2015, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: South Dakota School of Mines and Technology, 501 E. St. Joseph St., Room CB109, Rapid City, South Dakota, University Center, 4801 N. Career Ave., Room FADM 145, Sioux Falls, South Dakota, and Department of Transportation, 1306 W. 31st St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jim Bradford and Mike Vehle (Chair) and Representatives Peggy Gibson, Jean Hunhoff, and Timothy Johns (Vice Chair). Member excused: Senator Phyllis Heineman. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.sd.gov> under "Interim."

Approval of Minutes

Representative Gibson moved, seconded by Representative Johns, that the minutes of the September 21, 2015, meeting be approved. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Staff Report

Mr. Doug Decker, Code Counsel, stated a copy of the 2015 interim report was previously provided to the committee. Senator Vehle will make the presentation to the Executive Board at the November 16th meeting.

Mr. Decker informed the committee that long time LRC employee Ms. Marge Pirnat had retired. She had been solely responsible for updating the administrative rules for the past several years. Mr. Paul Giovanetti, Senior Legislative Secretary was introduced. He will be updating the administrative rules.

Rules Reviewed

Department of Game, Fish and Parks – Amend Mountain Lion Hunting Season and License Forms and Fees rules to modify the mountain lion harvest limit for the Black Hills Fire Protection District (including Custer State Park), establish a nonresident mountain lion hunting license at a fee of \$121 (includes \$6 surcharge), authorize the issuance of nonresident mountain lion hunting licenses (excluding Custer State Park), and amend the use of dogs for hunting mountain lions in Custer State Park; amend General Provisions (Fishing Seasons and Methods) rules to change the name of the "Black Hills Trout Management Area" to the "Black Hills Fish Management Area," correct the boundary description of the Black Hills Fish Management Area, and adopt a rule to allow white bass to be declared rough fish for the purpose of contracted commercial fishing; amend Fish Limits rules to change white bass limits on Nebraska border waters to match those of Nebraska, remove the restriction allowing only largemouth and smallmouth bass that are less than 14 inches in length or 18 inches or greater in length to be harvested from Lake Cochrane in Deuel County and Waubay Lake in Day County, remove the 15 inch minimum length restriction exemption in July and August for walleye from Ft. Randall Dam down to the South Dakota-Nebraska state line on the Missouri River, remove the 15 inch minimum length restriction for walleye from the Cattail/Kettle Lake Complex in Marshall County and Bitter Lake in Day County, remove the 15 inch minimum length restriction and remove the two fish daily limit restriction for walleye from Opitz Lake in Day and Marshall Counties, add a 15 inch minimum length restriction for largemouth and smallmouth bass in Bismarck Lake, Custer County, change the name of the "Black Hills Trout Management Area" to the "Black Hills Fish Management Area", and allow removal of fish eyes for use as bait while on the water and specify that the requirement that fish remain whole while on the water only applies to gamefish; amend a Paddlefish Snagging rule to allow snagging of paddlefish on the Big Sioux River during the October paddlefish season below Gavins Point Dam and delete language in current rule which provides that "Any paddlefish tag that is locked closed before attachment or that is altered or modified in any way is void and may not be replaced."; amend a Spearing rule to change the archery paddlefish season below Gavins Point Dam to run from June 1 through June 30; amend a Bait rule to change the name of the "Black Hills Trout Management Area" to the "Black Hills Fish Management Area;" amend a Bobcat Trapping and Hunting Season rule to add Clay, Hughes, Hutchinson, Hyde and Union counties to the open area for the East River season; and amend a Private Fish Hatcheries rule to require an applicant for renewal of a private aquaculture license to include a copy of the aquaculture facility's previous year's fish health inspection results with each license renewal application as a condition of renewal of the license.

Mr. Tony Leif reviewed the proposed rules. It was noted that rules pertaining to the nonresident mountain lion hunting licenses were withdrawn and the amendments regarding the length and limit changes for Opitz Lake were also withdrawn.

Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Transportation – Amend a Hughes County speed zone on U.S. Highway 14 and U.S. Highway 83 in Pierre beginning at Fourth Street northeasterly for .065 mile, 35 mph, then northeasterly for 3.2 miles, 55mph; and on U.S. Highway 14 and U.S. Highway 83 Truck Bypass in Pierre, beginning at the junction with State Trunk Highway 34, then north for 2.19 miles, 35 mph, then north to its junction with U.S. Highway 14 and U.S. Highway 83, 45 mph.

Mr. Bill Nevin reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Bradford, that the review of the rules proposed by the Department of Transportation is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Education: Board of Education – Amend a Certification rule to increase educator certification application fees effective July 1, 2016, and clean up language in the section.

Ms. Bobbie Rank and **Ms. Tami Darnall** reviewed the proposed rule and the fund condition statement.

Senator Vehle moved, seconded by Representative Gibson, that the review of the rule proposed by the Department of Education: Board of Education is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Labor and Regulation: Division of Insurance – Amend rules to update the insurance holding companies reporting requirements and amend rules regarding certificates of creditable coverage.

Ms. Mallori Barnett reviewed the proposed rules.

Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Labor and Regulation: Division of Insurance is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Revenue: Commission on Gaming – Amend Gaming rules to add a definition for House Banked Table Games; add new versions of blackjack to the list of authorized blackjack games; include within the authorized games of poker new games adopted by the Commission; authorize a variation of Mississippi Stud poker; create a new variation of poker known as Flushes Gone Wild; and create a variation of poker known as Hot Poker Spot.

Mr. Larry Eliason, Executive Secretary, and **Mr. Craig Sparrow** reviewed the proposed rules. It was noted that the Mississippi Stud poker and Flushes Gone Wild poker rules were not acted upon by the Commission and have been removed from the this set of rules.

Mr. Clayton Dubois, Las Vegas, Nevada, representing Gaming Partners International, explained the Hot Poker Spot side bet.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Revenue: Commission on Gaming is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Health: Board of Dentistry – Amend rules to remove obsolete provisions and references; update references; update permits to administer general anesthesia and deep sedation, moderate sedation, nitrous oxide inhalation analgesia, local anesthesia and permits to monitor patients under anesthesia or sedation; require continued competency for anesthesia and sedation permit holders; update rules related to contracting with licensed anesthesia providers; allow a dentist that holds a general anesthesia and deep sedation or moderate sedation permit to authorize a dental hygienist, registered dental assistant or dental assistant operating under direct visual supervision to inject medication pursuant to a verbal command and set forth the requirements for this authorization to occur; and update the anesthesia credentials committee.

Ms. Brittany Novotny, Executive Secretary, and **Dr. Roger Wilson**, Rapid City, President of the Board of Dentistry, reviewed the proposed rules, the process that had been followed, and background information regarding the proposed adoption of ARSD § 24:43:09:10.01 – Delegation of injection of medication.

Public Testimony

Dr. Jay Crossland, Rapid City, representing the South Dakota Society of Oral & Maxillofacial Surgeons, spoke in support of the proposed rules and specifically to the proposed adoption of ARSD § 24:43:09:10.01 – Delegation of injection of medication.

Mr. Brent Koenecke, Pierre, representing the South Dakota Dental Association, spoke in support of the proposed rules as written.

Mr. Justin Bell, Pierre, representing the South Dakota State Medical Association, spoke in opposition to proposed rules and specifically to the adoption of ARSD § 24:43:09:10.01 – Delegation of injection of medication. It was his position that the delegation should be in statute, not administrative rule and that it was outside the scope of what is allowed in SDCL §§ 36-6A-14, 36-6A-32.4, and 36-6A-41.

In response to a question regarding the statutory authority from the committee, Mr. Decker stated that the board is acting within their authority to promulgate the rule based on SDCL § 36-6A-14(10).

Representative Johns stated he would like to review the statutes before voting on the matter.

Senator Bradford moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Health: Board of Dentistry is complete. Motion prevailed on a roll call vote with 4 ayes, 1 nay, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, and Vehle. Member voting nay: Johns. Member excused: Heineman.

Office of the State Auditor – Repeal a rule regarding the minimum amount guidelines for electronic fund transfers evaluated by the Office of the State Auditor.

Mr. Steve Barnett, State Auditor, reviewed the proposed rule.

Senator Vehle moved, seconded by Senator Bradford, that the review of the rules proposed by the Office of the State Auditor is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department Health: Division of Health and Medical Services – Amend rules to add Coccidioidomycosis, Leptospirosis, Middle East respiratory syndrome (MERS), chikungunya, Colorado Tick Fever, Lead (elevated blood levels in children and adults), Silicosis, Carbon monoxide poisoning and Pesticide-related illness and injury, acute to the South Dakota Reportable Disease list.

Ms. Colleen Winter reviewed the proposed rules.

Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Health: Division of Health and Medical Services is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Next Meeting Date

The final meeting of the Interim Rules Review Committee for the 2015 interim will be on Monday, December 14, 2015.

Adjournment

Representative Johns moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed on a voice vote.

Chair Vehle adjourned the meeting at 1:47 p.m.